

Motion to Reconsider

An Immigration Judge may upon her or his own motion at any time, or upon motion of DHS or the alien, reconsider any case in which she or he has made a decision unless jurisdiction is vested with the BIA. 8 C.F.R. § 1003.23(b)(1). An alien may file only one motion to reconsider, and such motion must be filed within thirty days of the date of entry of a final administrative order of removal, deportation, or exclusion. 8 C.F.R. § 1003.23(b)(1). The time and numerical limitations for motions do not apply to motions by DHS in removal proceedings. 8 C.F.R. § 1003.23(b)(1). Nor do they apply to motions filed by DHS in deportation or exclusion proceedings when the basis of the motion is fraud in the original proceeding or a crime that would warrant termination of asylum in accordance with 8 C.F.R. § 1208.22(e). 8 C.F.R. § 1003.23(b)(1).

A motion to reconsider is a “request that the Board reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked.” Matter of O-S-G-, 24 I&N Dec. 56, 57 (BIA 2006) (quoting Matter of Ramos, 23 I&N Dec. 336, 338 (BIA 2002)). “A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen, which seeks a new hearing based on new or previously unavailable evidence.” O-S-G-, 24 I&N Dec. at 57-58. A motion to reconsider must state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge’s prior decision and be supported by pertinent authority. 8 C.F.R. § 1003.23(b)(2). However, a motion that merely restates the arguments previously raised will be properly denied. Khan v. Gonzales, 495 F.3d 31, 36-37 (2d Cir. 2007).

The BIA has held that:

a motion to reconsider should, consistent with the statute and regulations set forth at 8 C.F.R. § 1003.23(b)(2), include the following: (1) an allegation of material factual or legal errors in the Board’s decision that is supported by pertinent authority; (2) if the Board summarily affirmed the Immigration Judge’s decision, showing that the alleged errors and legal argument were previously raised on appeal and a statement explaining how the Board erred in affirming the Immigration Judge’s decision under the AWO regulations; and (3) if there has been a change in law, a reference to the relevant statute, regulation, or precedent and an explanation of how the outcome of the Board’s decision is materially affected by the change.

O-S-G-, 24 I&N Dec. at 60.